

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

ROBERT R. DENT and
MONICA M. DENT,

Plaintiffs,

Case No. 15-cv-11268

v

Honorable Thomas L. Ludington
Magistrate Judge Patricia T. Morris

INVESTMENT CORPORATION OF
AMERICA

Defendant.

**ORDER ADOPTING REPORT AND RECOMMENDATION, GRANTING
DEFENDANT'S MOTION FOR SUMMARY JUDGMENT, AND DISMISSING
PLAINTIFF'S COMPLAINT**

Plaintiffs Robert R. Dent and Monica M. Dent originally filed this action in Crawford County Circuit Court on March 12, 2015. Plaintiffs allege five counts related to their claims that Defendant failed to provide mortgage assistance and improperly conducted a foreclosure sale on their former residence: (1) failure to follow the requirements of MCL 600.320 *et seq.* in conducting a foreclosure sale; (2) violation of the Real Estate Settlement Procedures Act ("RESPA"), 12 USC §§ 2605(F), 1024.38, and 1024.41; (3) negligence; (4) breach of contract and promissory estoppel, and (5) fraudulent misrepresentation. Defendant removed the action to this Court on April 2, 2015 asserting jurisdiction under 28 U.S.C. §§ 1332, 1441, and 1446. ECF No. 1.

After the close of discovery, on October 27, 2015 Defendant filed a motion for summary judgment. ECF No. 16. Plaintiffs initially filed a response on October 30, 2015, and then filed an amended response on November 4, 2015. ECF Nos. 18, 19. On December 23, 2015,

Magistrate Judge Patricia T. Morris issued a report recommending that Defendant's motion for summary judgment be granted. ECF No. 20. The magistrate judge reasoned that no provision of RESPA allowed Plaintiffs to have their foreclosure proceeding nullified or force Defendant to negotiate a loan modification, and that Plaintiffs had not pled sufficient damages under RESPA. The magistrate judge also reasoned that Plaintiffs had presented no evidence that they had submitted an application for mortgage assistance, much less a completed application, nor had they demonstrated that Defendant had acknowledged receipt of any such application. Because Plaintiffs had impermissibly rested on their pleadings and created no material questions of fact, the magistrate judge recommended dismissing Plaintiffs' complaint in its entirety.

Although the magistrate judge's report explicitly stated that the parties to this action could object to and seek review of the recommendation within fourteen days of service of the report, neither Plaintiff nor Defendant filed any objections. The election not to file objections to the magistrate judge's report releases the Court from its duty to independently review the record. *Thomas v. Arn*, 474 U.S. 140, 149 (1985). The failure to file objections to the report and recommendation waives any further right to appeal.

Accordingly, it is **ORDERED** that the magistrate judge's report and recommendation, ECF No. 20, is **ADOPTED**.

It is further **ORDERED** that Defendant Investment Corporation of America's motion for summary judgment, ECF No. 16, is **GRANTED**.

It is further **ORDERED** that Plaintiffs' complaint is **DISMISSED with prejudice**.

s/Thomas L. Ludington
THOMAS L. LUDINGTON
United States District Judge

Dated: January 12, 2016

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on January 12, 2016.

s/Michael A. Sian
MICHAEL A. SIAN, Case Manager